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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.174 OF 2024
WITH
INTERIM APPLICATION NO. 1892 OF 2024**

Sea Face Park CHS Limited ... Appellant

Vs.

Designated Office, Executive Engineer ... Respondents
(Building and Factory) D Ward and Another

Mr. Kaustubh Patil for the Appellant.

Mr. Som Sinha a/w/ Ms. Neeta Jadhav i/b. Ms. Komal Punjabi for
Respondent-BMC.

CORAM : GAURI GODSE, J.

DATE : 2nd MAY 2025

ORDER :

1. Learned counsel for the appellant has tendered an affidavit dated 2nd May 2025 signed by the authorised representative of the society. Photographs of the offending structure and the resolution passed by the Managing Committee is annexed to the affidavit. The affidavit states that the existing structure described in the impugned order was never used as a garage and that the adjacent premises marked as 34/E7 is a separate garage. The affidavit further states that

within a period of ten weeks the construction of the toilet and kitchen platform in the disputed room shall be removed by the society.

2. The copy of the affidavit dated 2nd May 2025 is taken on record. The assurance recorded in the affidavit are accepted as undertakings on behalf of the society to this court. The society is granted ten weeks time to remove the construction of toilet and kitchen platform as described in the impugned notice.

3. This is yet again another case where the corporation has issued notice under Section 351 based on a complaint. Copy of the complaint by one of the member of the society is annexed at page 165 of the appeal compilation. Neither the impugned notice nor the speaking order refers to any inspection taken of the sanctioned plan before arriving at a conclusion that it is unauthorised construction or there is change in use. Learned counsel for the corporation has no instructions as to whether the guidelines framed by the corporation in the circular dated 4th June 2013 is followed before issuing notice under Section 351 of The Mumbai Municipal Corporation Act, 1988.

4. The corporation shall therefore file affidavit of the officer who has

issued the notice explaining the manner in which the decision was taken to act upon the complaint and issue notice under Section 351. The affidavit shall also explain whether the concerned officer had taken inspection of the record and the sanctioned plan before concluding that there is any unauthorised construction or unauthorised change in use. Necessary affidavit to be filed within six weeks with an advance copy to the learned advocate for the appellant.

5. Subject to the compliance of the affidavit filed on behalf of the society, no coercive action shall be taken to implement the impugned notice and the speaking order until further orders are passed by this court. It is clarified that the society shall not carry out any further construction or continue use of the offending structure as residence.

6. List the appeal for recording compliance and further hearing of the appeal on 20th June 2025.

[GAURI GODSE, J.]